

REMARKS

Claims 10 to 18 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

As to paragraph five (5) of the Office Action, Figure 1 has been labeled prior art, as suggested. Accordingly, withdrawal of the objection is respectfully requested.

With respect to paragraph eight (8), claims 10 to 18 were rejected under 35 U.S.C. § 112 as directed to non-statutory subject matter.

The Office Action conclusorily asserts that the term “irregularities” is “not well defined in the claim and it is unclear as to what exactly is meant by irregularities.” It is respectfully submitted that the cited terms and phrases are definite and clear as used, and as would be understood when each of the rejected claims is read in view of the specification — which is the proper objective standard.

While the rejections may not be agreed with, to facilitate matters, claims 10 and 17 have been rewritten to better clarify the claimed subject matter. In particular, as to the specific definiteness issues raised in the Office Action, it is believed that claims 10 and 17 as presented obviate the asserted issues, so that claims 10 and 17 are allowable, as are their respective dependent claims 11 to 16 and 18. In particular, the present application specifically discloses, for example, the following: “The transmitting power of the radar transmitter is reduced when **irregularities occur which are attributable to interference caused by neighboring radar transmitters.**” (*Abstract.*) These interferences are shown in Fig. 4 of the application. Furthermore, the specification describes the characteristics of the interference of Fig. 4 as follows: “[T]he characteristic curve of second received signal ES2 shown in the middle area of the diagram is influenced by a strong interference, which may be caused by an FMCW (frequency modulated continuous wave) radar. Third received signal ES3 illustrated in the lower part of the diagram is affected by a very strong interference of the same type.” (*Specification*, page 6, lines 1 to 10.) Therefore, the present application makes the terms definite as to any person having ordinary skill.

To facilitate matters, claim 12 has been revised to better clarify the language as suggested.

It is therefore respectfully submitted that claims 10 to 18 are definite.

With respect to paragraph ten (10) of the Office Action, claims 10 and 18 were rejected under 35 U.S.C § 102(b) as anticipated by Richardson et al. ('333), Ammar et al. ('511), or Winter et al. ('074).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

As to claims 10 and 18, the "Richardson" reference does not identically disclose (nor even suggest) the claim feature of "reducing the power of radar signals transmitted by the radar transmitter if irregularities in at least one of an amplitude or a frequency of the incoming signal that are attributable to interference caused by neighboring radar transmitters are detected", as provided for in the context of each of these claims. The "Richardson" reference "reduces interference by making **more channels available** in a given bandwidth by using TDMA." ("Richardson", column 5, lines 24 to 25.) which does not identically disclose (or even suggest) the foregoing features of claims 10 and 18.

As regards the "Winter" reference (like the "Richardson" reference), it does not identically disclose (nor even suggest) the claim feature of "reducing the power of radar signals transmitted by the radar transmitter if irregularities in at least one of an amplitude or a frequency

of the incoming signal that are attributable to interference caused by neighboring radar transmitters are detected", as provided for in the context of each of the claims.

As regards the "Ammar" reference, Applicants respectfully note that the "Ammar" reference is not valid prior art under 35 U.S.C. § 102(b).

A U.S. patent application which is a national stage of an international application under 35 U.S.C. § 371 has an effective U.S. filing date which is its international filing date. Therefore, because the present application is a national stage application under 35 U.S.C. § 371, its effective filing date is at least as early as its international filing date, i.e., November 26, 2002. The "Ammar" reference published on February 21, 2006. Thus, the "Ammar" reference is not prior art under 35 U.S.C. § 102(b).

Accordingly, claims 10 and 18 are allowable, as are their respective dependent claims.

CONCLUSION

It is therefore respectfully submitted that claims 10 to 18 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

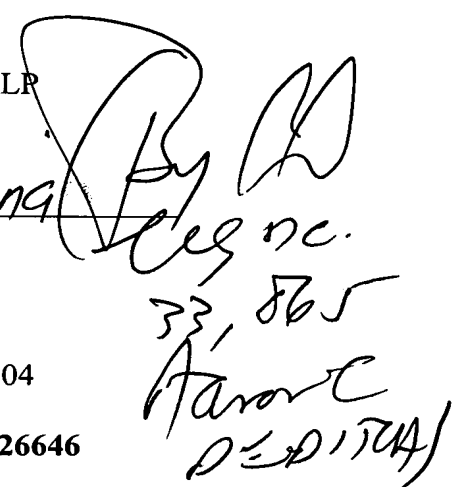
Dated: 11/27/2007

Respectfully submitted,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Klaus VOIGTLAENDER et al.
Serial No. : 10/534,642
Filed : October 21, 2005
For : METHOD AND DEVICE FOR
ADAPTIVELY CONTROLLING POWER
Art Unit : 3662
Examiner : John B. SOTOMAYOR
Confirmation No. : 7106
Customer No. : 26646

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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on
Date: 11/27/2007
Signature: AARON C. DEITCH
TRANSMITTAL (33,865)

SIR:

Please find transmitted herewith for filing in the above-identified patent application is an Amendment and a Replacement Sheet for Figure 1.

While no fees are believed to be due, the Commissioner is authorized to charge any fees (including any extension fees) (or credited, as necessary) to Kenyon & Kenyon LLP, **Deposit Account No. 11-0600**. A duplicate copy of this transmittal letter is enclosed for this purpose.

Dated: 11/27/2007

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